

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**GEC US 1 LLC, *et al.*,**

Plaintiffs,

v.

**FRONTIER RENEWABLES, LLC,**

Defendant.

Case No.: 16-cv-1276 YGR

**ORDER REQUIRING SUPPLEMENTAL  
RESPONSE TO ORDER TO SHOW CAUSE RE:  
DIVERSITY OF CITIZENSHIP; CONTINUING  
HEARING**

**FRONTIER RENEWABLES, LLC,**

Counterclaim Plaintiff,

v.

**ACTIVE SOLAR GMBH, *et al.*,**

Counterclaim Defendants.

TO PLAINTIFFS,<sup>1</sup> COUNTERCLAIM DEFENDANTS, AND THEIR COUNSEL OF RECORD:

On April 18, 2016, the Court issued an order to show cause directing the parties to file responses thereto which “set forth the bases for their assertions of complete diversity of citizenship from all adverse parties” with supporting affidavits or declarations. (Dkt. No. 35.) On April 25, 2016, Plaintiffs and Counterclaim Plaintiff filed a joint response. (Dkt. No. 42.) The response, however, is deficient with respect to certain Plaintiffs and Counterclaim Defendants. It again conflates the citizenship tests for corporations and limited liability corporations with respect to plaintiffs/counterclaim defendants GEC US 1 LLC (“GEC”) and AS (Wright) LLC (“AS Wright”), and counterclaim defendant Green Evolution Capital, LLP (“Green Evolution”). The response is also

<sup>1</sup> All terms shall have the same meaning as defined in the Court’s order to show cause. (Dkt. No. 35.)

1 insufficient as to Activ Solar holdings (US) Inc. (“Activ”), Colin Brent, Kim Koehler, and Kaveh  
2 Ertefai.

3 As such, Plaintiffs failed to comply with the Court’s order to show cause. The response fails  
4 to establish the citizenship of all parties sufficiently and the Court cannot yet determine whether  
5 complete diversity exists. The Court will afford Plaintiffs and Counterclaim Defendants a final  
6 opportunity to establish diversity by submitting a supplemental response. Failure to comply will  
7 result in dismissal of this action for lack of subject matter jurisdiction. Given the failure to be  
8 forthcoming, the Court is now skeptical of whether jurisdiction exists. Specifically, Plaintiffs and  
9 Counterclaim Defendants must address the following in their supplemental response:

10 First, with respect to GEC, the parties must clarify whether GEC is a corporation subject to  
11 the diversity test under 28 U.S.C. section 1332(c)(1), or a limited liability corporation subject to the  
12 diversity test for limited liability entities as stated by the Ninth Circuit in *Kuntz v. Lamar Corp.*, 385  
13 F.3d 1177, 1182 (9th Cir. 2004). If the former, the parties should confirm it is their position that  
14 GEC is a citizen of Delaware and New York. If the latter, the parties should confirm that GEC’s sole  
15 member is Green Evolution, and that GEC’s citizenship for diversity purposes is therefore the same  
16 as that of Green Evolution. *See id.*

17 Second, with respect to AS Wright, the parties must similarly confirm it is their position that  
18 AS Wright is a limited liability corporation with the same citizenship for diversity purposes as its sole  
19 member GEC.

20 Third, with respect to Activ, the parties must identify its principal place of business and  
21 provide sufficient justification therefor. That Activ “maintains a mailing address in New York” is not  
22 relevant under the citizenship test for corporations, 28 U.S.C. section 1332(c)(1).

23 Fourth, with respect to Green Evolution, the parties must provide sufficient justification for  
24 the assertion that Green Evolution’s citizenship for diversity purposes is England and Wales.

25 Finally, with respect to Counterclaim Defendants Brent, Koehler, and Ertefai, the parties must  
26 provide evidence of where the natural persons are domiciled, not merely where they reside. *Kanter v.*  
27 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (“A person residing in a given state is not  
28 necessarily domiciled there, and thus is not necessarily a citizen of that state.”)

1 No later than **Friday May 6, 2016**, Plaintiffs and Counterclaim Defendants must file their  
2 written supplemental response to this Order. Their response shall set forth the bases for their  
3 assertions of complete diversity of citizenship from all adverse parties, and shall include declarations  
4 or affidavits supporting any statements of fact, consistent with Civil Local Rule 7-5.

5 The Court **CONTINUES** the Order to Show Cause hearing currently set for April 29, 2016 to  
6 **Friday, May 13, 2016 at 9:01 a.m.** in the Federal Courthouse located at 1301 Clay Street in Oakland,  
7 California, Courtroom 1. If Plaintiffs and Counterclaim Defendants have timely filed their response,  
8 the hearing may be taken off calendar and no appearance may be required. Failure to file a response  
9 timely may result in sanctions and dismissal for failure to make a jurisdictional showing.

10 **IT IS SO ORDERED.**

11 Dated: April 28, 2016

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14 YVONNE GONZALEZ ROGERS  
15 UNITED STATES DISTRICT COURT JUDGE  
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